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Office Supreme Court, U. S.
FILED.
JAN 25 1907
JAMES H. McKENNEY,
CLERK.

No. 5 Orig.
O. T. 1907

~~Nov. 12, Original.~~

In the Supreme Court of the United States.

~~October Term, 1906.~~

THE UNITED STATES OF AMERICA, COMPLAINANT,
v.
JOHN F. SHIPP AND OTHERS, DEFENDANTS.

SUGGESTION OF THE ATTORNEY-GENERAL IN REPLY TO BRIEF FOR CERTAIN DEFENDANTS ON MOTION TO TAKE TESTIMONY.

In the Supreme Court of the United States.

OCTOBER TERM, 1906.

THE UNITED STATES OF AMERICA, complainant, *v.* JOHN F. SHIPP AND OTHERS, defendants. } No. 12, Original.

SUGGESTION OF THE ATTORNEY-GENERAL IN REPLY TO BRIEF FOR CERTAIN DEFENDANTS ON MOTION TO TAKE TESTIMONY.

In the brief filed by certain of the defendants reasons are suggested why the testimony should be taken at Chattanooga, and the court's order directing that it shall be taken before a commissioner appears to designate Chattanooga as the place. The Attorney-General now respectfully requests the court to reconsider this designation and to designate the city of Washington, at least for the purpose of taking the testimony of witnesses for the United States, for the following reasons:

1. The defendants themselves need not attend the hearings in Washington unless, as is unlikely, they wish to be personally present, and their counsel will probably find it no serious hardship to come to Washington.

2. If the defendants are, in fact, inconvenienced and suffer some hardship through loss of time or money, or both, these are ordinary and necessary incidents of their situation. They rest under a charge which must be tried. A *prima facie* case has been made out, in the sense that proofs against them are now to be offered and they are called upon to meet the charge. It may be fairly assumed that it is not wholly without their own fault that they are in this position. Defendants generally must attend the trial court at its usual place of session, either personally or by counsel. The official duties of some among them need not, and should not, change that rule in this case. The entire sheriff's force need not be withdrawn from Hamilton County merely to listen to the testimony for the United States; and it is right and customary, not harsh and arbitrary, to bring witnesses from any part of a district to the court. The court does not go to them. The entire country is the district in the present case, and the court only sits in Washington; the city of Washington, then, is the natural place for the taking of the testimony. This is none the less true because an officer of the court and not the court itself is to take the testimony, and because the defendants have the right to be present, if they are not compelled to be present.

3. It seems to us very important that the testimony should be taken under the eye and direct control of the court, to afford opportunities for

immediate reference to the court by, and instructions from the court to, the commissioner in connection with unexpected incidents which may readily occur during the examination of witnesses in a case like this one, wholly without precedent.

4. Finally, it is submitted that the locality where this terrible occurrence took place, and where (as appears from the crime itself, from the record in Johnson's case, and from the oral argument herein on the preliminary questions of law) the feelings of certain portions of the community have been and are still greatly excited, is an unsuitable place for this examination, at least of the witnesses for the United States. In that locality the real facts can not be elicited in a calm and dispassionate atmosphere, free from the danger that local prejudice and a sense of personal insecurity may stifle or check the full and frank utterances of the witnesses for the prosecution; and the Attorney-General deems it his duty to advise the court that confidential information in the possession of the Department of Justice, of a character entitled to credit, indicates that witnesses for the United States may reasonably, and will in fact, entertain apprehensions of danger to themselves if they testify at Chattanooga.

CHARLES J. BONAPARTE,
Attorney-General.

HENRY M. HOYT,
Solicitor-General.

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THE UNITED STATES OF AMERICA, COMPLAINANT,

v.

JOHN F. SHIPP AND OTHERS, DEFENDANTS.

NOMINATION TO THE COURT OF COMMISSIONER TO TAKE THE TESTIMONY.

CHARLES J. BONAPARTE,
Attorney-General.

HENRY M. HOYT,
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In the Supreme Court of the United States.

OCTOBER TERM, 1906.

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The Attorney-General has the honor to report that counsel of record for the defendants unite with him in the nomination to the court of James D. Maher, esq., of the District of Columbia, to take the testimony of the witnesses in this cause.

CHARLES J. BONAPARTE,
Attorney-General.

HENRY M. HOYT,
Solicitor-General.

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